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§ 4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian's estate; or
- (d) Regarding modification of the inventory of an estate.

[76 FR 7505, Feb. 10, 2011]

§ 4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[73 FR 67288, Nov. 13, 2008]

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

[73 FR 67288, Nov. 13, 2008]

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that

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service was made as required by this section.

[73 FR 67288, Nov. 13, 2008]

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify:

- (1) The agency concerned; and
- (2) The LTRO where the original record was filed under § 30.233 of this subtitle.

(b) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original transcript in the record.

(c) Within 30 days of the receipt of the transcript, the LTRO must do the following:

(1) Prepare a table of contents for the record;

(2) Make two complete copies of the original record, including the transcript and table of contents;

(3) Certify that the record is complete;

(4) Forward the certified original record, together with the table of contents, to the Board by certified mail or other service with delivery confirmation; and

(5) Send one copy of the complete record to the agency.

(d) While the appeal is pending, the copies of the record will be available for inspection at the LTRO and the agency.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

(1) An interlocutory appeal under § 4.28;

(2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or

(3) An appeal from a decision under § 30.124 determining that a person for

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whom a probate proceeding is sought to be opened is not deceased.

[76 FR 7505, Feb. 10, 2011]

§ 4.325 How will the appeal be docketed?

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

[73 FR 67288, Nov. 13, 2008]

§ 4.326 What happens to the record after disposition?

(a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:

(1) The record filed with the Board under § 4.324(d) or (f); and

(2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.

(b) The LTRO must conform the duplicate record retained under § 4.324(b) to the original sent under paragraph (a) of this section and forward the duplicate record to the agency concerned.

[73 FR 67288, Nov. 13, 2008]

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians

which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy